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| APPLICATION NO.              | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------|-------------|----------------------|---------------------|------------------|
| 10/718,788                   | 11/21/2003  | Robert M. Carmichael | 8960.6816           | 1542             |
| 22235                        | 7590        | 05/04/2004           | EXAMINER            |                  |
| MALIN HALEY AND DIMAGGIO, PA |             |                      | AVILA, STEPHEN P    |                  |
| 1936 S ANDREWS AVENUE        |             |                      |                     |                  |
| FORT LAUDERDALE, FL 33316    |             |                      | ART UNIT            | PAPER NUMBER     |
|                              |             |                      | 3617                |                  |

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                       |
|------------------------------|------------------------|-----------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>   |
|                              | 10/718,788             | CARMICHAEL, ROBERT M. |
|                              | <b>Examiner</b>        | <b>Art Unit</b>       |
|                              | Stephen Avila          | 3617                  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5, 6, 12, and 13 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Shieh (cited in parent application 09/803868). Shieh discloses a dive marker with an inflatable body member in the form of a vane with dive flag indicia 422, an inflatable mast 421, a valve (at the base of Shieh), an inflatable platform 41, maintaining means in the form of a pocket 412, and a light 50 connected to the upper portion via the mast. Note that the platform is independently inflatable from the vane and that the valve is a simple push valve which is not locked and would release upon having too much pressure in the device by releasing its friction hold.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shieh in view of Christiansen (both cited in parent application 09/803868). Shieh does not disclose straps. Christiansen teaches a strap 23 to attach maintaining means 21. It

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would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the maintaining means of Shieh with a connecting strap as taught by Christiansen for improved ballasting. Additionally to form the device with two straps would have been an obvious choice of engineering design to a person of ordinary skill in the art at the time the invention was made for increased strength and reliability.

5. Claims 4 and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shieh in view of Daughenbaugh (both cited in parent application 09/803868). Shieh does not have three outer sides. Daughenbaugh teaches three outer sides 42 (note Figure 6, for example). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the device of Shieh with three outer sides as taught by Daughenbaugh for improved visibility.

6. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shieh in view of Jimmie (both cited in parent application 09/803868). Shieh does not disclose a plurality of vanes. Jimmie teaches a plurality of vanes 26. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the device of Shieh with a plurality of vanes as taught by Jimmie to be easily seen in all directions for increased safety.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Galbraith shows a buoy.

8. Berg was cited in parent application 09/803868.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Avila whose telephone number is 703-308-

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2578. The examiner can normally be reached on Monday to Thursday from 8 AM to 4 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Stephen Avila  
Primary Examiner  
Art Unit 3617

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*Avila  
5/20/04*